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19 ARISTA NETWORKS, INC.

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN JOSE DIVISION

23 CISCO SYSTEMS, INC.,

24 Case No. 5:14-cv-05344-BLF (NC)

25 Plaintiff,

26 v.  
27 **DECLARATION OF DAVID J. ROSEN IN  
28 SUPPORT OF DEFENDANT ARISTA  
NETWORKS, INC.'S ADMINISTRATIVE  
MOTION TO REDACT/SEAL PORTIONS  
OF COURT'S ORDER RE MOTIONS IN  
LIMINE**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 I, DAVID J. ROSEN, declare and state as follows:

2       1. I am an attorney licensed to practice law in the State of California and admitted to  
 3 practice before this Court. I am an associate at the law firm of Keker & Van Nest LLP and  
 4 counsel for Defendant Arista Networks, Inc. in the above-captioned action. I have personal  
 5 knowledge of the facts stated herein and, if called as a witness, I could testify competently  
 6 thereto.

7       2. Arista seeks to redact and seal certain portions of the Court's Order RE Motions In  
 8 *Limine* [Re: ECF 524, 525, 526, 527, 531, 532, 533, 534, 535, 536], which the Court made  
 9 available to the parties on November 9 for the purpose of identifying potentially sealable  
 10 information.

11       3. Because this motion to redact and seal relates to a non-dispositive motion, the  
 12 documents and information that the parties request to file under seal are not subject to a strong  
 13 presumption of public access. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180  
 14 (9th Cir. 2006). Rather, the "good cause" standard of Rule 26(c) of the Federal Rules of Civil  
 15 Procedure applies to the material that Arista seeks to file under seal. *Id.* at 1179. Civil Local Rule  
 16 79-5 further requires that a party seeking to seal information and documents "establish[] that the  
 17 document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to  
 18 protection under the law." Civil L.R. 79-5(b). The sealing request must also "be narrowly tailored  
 19 to seek sealing only of sealable material." *Id.*

20       4. Arista seeks to redact and seal the following portions of the Court's Order on  
 21 Motions *In Limine* :

- 22           • Page 7, lines 15 & 28;  
 23           • Page 8, line 2;  
 24           • Page 12, lines 19–21, starting with "Arista's Senior Vice President" and ending  
 25           with "publicly."

26       5. Good cause supports sealing the specified lines on pages 7 and 8 because they  
 27 quote statements and findings from the CONFIDENTIAL VERSION of the International Trade  
 28 Commission's Opinion in *In the Matter of Certain Network Devices, Related Software, and*

1       *Components Thereof(I)*, Investigation No. 337-TA-944. Compelling reasons justify redacting  
 2 this reference because it consists of Arista confidential business information. The confidential  
 3 version of the Commission's Opinion contains information designated by Arista as confidential  
 4 business information pursuant to Commission Rule 201.6, which defines confidential information  
 5 as: "information which concerns or relates to the trade secrets, processes, operations, style of  
 6 works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of  
 7 customers, inventories, or amount or source of any income, profits, losses, or expenditures of any  
 8 person, firm, partnership, corporation, or other organization, or other information of commercial  
 9 value, the disclosure of which is likely to have the effect of either impairing the Commission's  
 10 ability to obtain such information as is necessary to perform its statutory functions, or causing  
 11 substantial harm to the competitive position of the person, firm, partnership, corporation, or other  
 12 organization from which the information was obtained, unless the Commission is required by law  
 13 to disclose such information." 19 C.F.R. § 201.6(a)(1). Arista previously requested confidential  
 14 treatment for certain portions of the Commission's Opinion, and the public version of the Opinion  
 15 does not include the information quoted and cited to in the Court's order.

16       6.       Good cause supports sealing the specified lines on page 12 because they  
 17 summarize an Arista witness's discussion of internal, non-public information regarding  
 18 competitive intelligence and Arista sales strategies. *See In re Elec. Arts, Inc.*, 298 F. App'x at  
 19 569–70; Delphix, 2014 WL 4145520, at \*2; *Koninklijke Philips*, 2015 WL 581574, at \*1–2; *see also Schwartz*, 2016 WL 1301186, at \*2 (discussing the harm that could result by the  
 20 dissemination of similar sensitive internal business information to competitors, who would find it  
 21 valuable).

22       7.       Arista does not seek to seal any other portions of the Court's Order.

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1 Executed November 16, at San Francisco, California.

2 I declare under penalty of perjury under the laws of the United States of America that the  
3 foregoing is true and correct.

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DAVID J. ROSEN